City of Pella / Teamsters Local 147 (utility) 2001-02.

CEO 325
SECTOR 3

IN THE MATTER OF ARBITRATION

Between	{}	
	{}	**ARBITRATION AWARD**
CITY OF PELLA,	{}	
Employer	{}	**Kim Hoogeveen, Ph.D.**
	{}	**Arbitrator**
AND	{}	
	{}	**Issued: March 26, 2002**
TEAMSTERS LOCAL 147,	{}	
Employee Organization	{}	

APPEARANCES:

Is it the agreement wages

For Teamsters Local 147:

Ron McClain, Local 147 Representative

Jill Hartley, Attorney

Mike Norman, Local 147 Union Steward

For the City of Pella:

Renee Von Bolern, Employer Representative

Jim Twombly, City Administrator

Gerald A LoRang, City Attorney

Tammy VanGorp, City Clerk

Gorden Shinn, City Elect. Director

Larry Peterson, City Elect. Superintendent

STATEMENT OF JURISDICTION

This matter proceeded to an Arbitration Hearing pursuant to the statutory impasse procedures established in the Public Employment Relations Act, Chapter 20, Code of Iowa. The undersigned was selected to serve as arbitrator from a list furnished to the parties by the Iowa Public Employment Relations Board.

The arbitration hearing was convened at 10:10 a.m. on March 19, 2002 in the Pella Community Center. Both parties were given a full opportunity to present exhibits, evidence, and arguments in support of their respective positions. The award is based on the evidence, facts, and arguments presented by the parties.

ARBITRATION CRITERIA

The Iowa Public Employment Relations Act contains specific criteria that are to be used by an Arbitrator in assessing the reasonableness of the parties' arbitration proposals. The criteria set forth in Section 20.22(9) of the Act states:

The Panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

a. *Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.*

b. *Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.*

c. *The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.*

d. *The power of the public employer to levy taxes and appropriate funds for the conduct of its business.*

IMPASSE ITEMS

Only one item was submitted for arbitration: Wages.

BACKGROUND & FINAL OFFERS

The City of Pella (hereinafter, City) owns and operates its own utility plant to generate electricity. Employees working within the Electric Department are represented by Teamsters Local 147 (hereinafter, Union).

Recent negotiations between these two parties have been marked by discord stemming from unilateral action taken by the City in September of 2000 to significantly increase the wage rate above the contractually stipulated amount for one existing position (Lineman[1]) and to significantly increase the wage rate of another newly created position (Utility Locator) beyond what had been previously agreed to via City-Union correspondence.[2] The City argued that it was compelled to take such actions to assure its ability to retain and recruit adequate personnel so as to allow for the successful operation of the utility. As a result of the unilateral actions taken by the City, the Union filed a prohibited practice complaint with the Public Employment Relations Board on September 29, 2000 on which an evidentiary hearing was held on August 14, 2001. While that complaint was pending, the parties reached impasse on their negotiations for their 2001 contract, which resulted in an Arbitration Award being issued by Habbo G. Fokkena on

1. The position of "Lineman" is sometimes referred to as "Lineperson" in various rulings and agreements.

2. Note that earlier in 2000, the Union had agreed via correspondence with a City proposal to reorganize the utility by deleting two vacant job classifications and to combine the responsibilities of those two roles in the new position of Electric Technician. The City's proposed wage scale for this new position constituted a significant increase over what had been paid to either of the two positions that were eliminated. Roughly three months after being notified of the City's intent, the Union approved the City's proposed wage scale for this new position and it was accordingly implemented.

December 29, 2000. The Union's position at that arbitration, i.e., that those job classifications within the bargaining unit which had not received the large wage increases should receive a similar 19.75% increase, was rejected by the arbitrator in favor of the City's proposed across-the-board 4% pay raise for all positions except those of Lineman and Utility Locator. James H. Murphy, Administrative Law Judge, issued the prohibited practice ruling on January 11, 2002. He found that in the case of the Lineman position for which the City had unilaterally raised wage rates (and not in the case of the Utility Locator only because that specific job classification was not yet clearly included in the bargaining unit), the City had committed a prohibited practice and ordered an appropriate remedy.

During negotiations for this contract, the parties reached a tentative agreement on a two-year contract for 2002 and 2003. The Union did not ratify the tentative agreement, and parties thus find themselves at impasse at this time. All procedural deadlines have been waived, and both parties agree that this ruling will be retroactively effective to January 1, 2002. Three of the four items agreed upon by the parties in the tentative agreement (all but wages) have continued to be part of each of the party's final offer for arbitration and will be incorporated into the new contract, resulting in wages being the sole issue to be decided.[3]

The Employer's Final Offer: The City's final offer submitted to arbitration is a 3% increase to each of the wage ratios for all wage classifications. The City's final offer

3. I have noted subsequent to the hearing that the City and Union submittals contain an inconsequential discrepancy in the wording on the agreement related to article 17.01 with the City using the word "and" and the Union using the word "or" before the word "family." It would appear that "or" is the better term, but the meaning is clear and consistent either way as confirmed by the parties' explicit agreement at the hearing that wages are the sole issue to be decided at arbitration.

is identical to that of the tentative agreement that was reached between the parties, with the exception that the two-year agreement envisioned via the tentative agreement is reduced to one year.

The Union's Final Offer: The Union's final offer submitted to arbitration calls for a 3.75% wage increase for five specified positions (i.e., Operating Engineer, Relief Operator, Boiler Technician, Maintenance, and Coalhandler) and a 1.50% increase for the remaining three positions (i.e., Electric Technician, Lineman, and Utility Locator).

RATIONALE OF THE PARTIES

Arguments were presented to the Arbitrator via testimony and exhibits. Although not intended to be a comprehensive review of the record, the following constitutes a brief summary of the assertions of the parties.

THE UNION

The Union argues that due to action taken by the City (some of it unilateral and subsequently found to be a prohibited practice yet ratified into place as a result of last year's arbitration ruling in favor of the City) to sharply increase the wage scales for select job classifications within the bargaining unit, it is now reasonable to provide higher salary increases to the remaining job classifications that did not benefit from such adjustments. The wages of all three positions for which the Union is requesting the lower 1.5% salary adjustment have increased well in excess of 20% over the past two years (although the Utility Locator and Electric Technician are both new positions with the "increase" for the former being calculated from a base of the original pay rate as agreed upon by the City

and the Union and the increase for the latter based on the pay rates in effect for the positions that were replaced by the Electric Technician). The remaining five positions, for which the union is requesting a 3.75% salary adjustment, have increased just slightly over 7% during the same two-year period. The Union points out that their counter proposal on wages, made after the Union declined to ratify the tentative agreement, was carefully drawn so as not to exceed the total cost of the tentative agreement that had been reached as part of the bargaining process. The City stipulated late in the hearing that the total cost of the Union's arbitration proposal may well be slightly (I estimate roughly $300 from an exhibit provided by the Union) below that of the tentative agreement that was rejected by the Union and remains the position of the City at arbitration.

THE CITY

The City believes that the crux of the Union's motivation for rejecting the tentative agreement is an issue that has been dealt with in other forums (i.e., arbitration and the prohibited practice hearings) and appropriately remedied: the substantial salary increase that Linemen have received over the past two years. With the Union's rejection of the tentative agreement and their subsequent proposal for differential raises, the City states that the Union is rehashing an issue that should have long been put to rest by the Union and should be "irrelevant" to bargaining for the 2002 contract.

The City also asserts that because a tentative agreement had been reached between the parties, and was subsequently rejected by the Union during the ratification process, the arbitrator should place an extremely heavy burden on the Union to show why the terms of the tentative agreement should not be upheld. The City provided a brief that cites numerous rulings and comments by neutrals addressing this issue. The City claims

that it is "fundamentally unfair" for the Union to accept the parts of the tentative agreement they like, and to then carve out those parts they don't like, for the purpose of using the tentative agreement as a floor from which the neutral will award something different. The City claims that if neutrals fail to give heavy weight to tentative agreements that were reached in good faith at the bargaining table, the result will be to: 1) penalize the parties who have gone the "extra mile" to reach the tentative agreement, and 2) encourage parties to withhold their best offers from the bargaining process.

Finally, the City presented some limited comparability data to demonstrate that the employees in this Union have a strong health insurance package and that Pella's pay rates for the positions of Lineman and Operating Engineer are now quite competitive, i.e., Lineman ranking third from the highest in the comparison group of eleven and Operating Engineers ranking fourth in the same comparison group.

ANALYSIS AND CONCLUSIONS

Each of the parties presented their case clearly at the hearing. Although it is not reasonable for the parties to expect a specific response to each and every one of their assertions and exhibits, what follows is my assessment of the relative strength and rationale of some of the key arguments that were advanced.

When the criteria specified by the Iowa Public Employment Public Relations Act are considered, three of them become relevant in this decision. I am giving weight to the bargaining history, comparability, and the interests and welfare of the public. Ability-to-pay is not a factor in the decision as the two proposals are almost identical in cost.

I reject the City's argument that the differential pay increases that were received by different job classifications over the past two years are irrelevant to this ruling. The

City was found to have acted inappropriately when it unilaterally acted to increase the pay rates of Lineman without the acquiescence of the Union. This was confirmed by the prohibited practice ruling from PERB, but by the time of that ruling the higher salary rates had already been implemented, via last year's arbitration ruling, into the contract wage rates. Admittedly, the Union is partially responsible for this situation by having taken an exceptionally aggressive position to last year's arbitration – one which almost assured that the City's position would be awarded. It also appears that the long interval that occurred between the Union's September 2000 filing of a prohibited practice complaint and PERB's eventual January 2002 ruling in their favor, was not helpful to the Union. It is reasonable for the Union to ask me to consider all of the bargaining history, including the fact that Linemen have had salary increases of 23% over the past two years while many other positions have increased by only slightly more than 7%.

But the Union must make more of a case than to simply point out the pay raise differential. The City seems to have made an uncontested case that the pay rates for the positions of Lineman and Utility Locator were well below the market rate for such positions. The City's inability to retain and hire individuals to fill these important positions at the lower wage rates was a real and looming problem for the City – one that had the potential to jeopardize the successful operation of the utility if not addressed promptly. There appears to be some evidence that the Union was not particularly prompt or responsive to the prior requests of the City to address similar compensation adjustment issues. Although the City was determined to have acted inappropriately in taking unilateral action to address a problem, their action falls well short of "deplorable" as it was characterized by last year's arbitrator. Such sharp rebukes should be reserved for

situations where an employer acts unilaterally to cut the pay rates of members of a bargaining unit, and not in a situation where an employer acts to increase the pay of select employees in response to market conditions and legitimate public interest. In fact, at no time in this hearing (or in the record of any other proceeding that I could find in their exhibits) did the Union present any data or even make an assertion to refute the City's position that the wage rates for Lineman and Utility Locator did need to be significantly adjusted due to market conditions. According to the comparison data presented by the City, had Linemen in Pella received the same pay increase (roughly 7.1%) that was given to most other job classifications over the past two years, their current ranking of third would fall to ninth in the comparison group of eleven. To be persuasive with their argument, the Union needed to present comparability data to show that the relative rank of the Linemen now falls well above the respective ranking of other job classifications. The Union provided no comparability data at all.

I acknowledge that gathering meaningful comparability data may well be hard for this type of bargaining group due to the idiosyncrasies of how each utility may be staffed and operated. Nevertheless, the Union provided no data and the City provided very limited comparability data. It is also ironic to note that for the only two positions for which the City provided comparability data, the relative ranking (3^{rd}) of the Lineman position (for which the Union was recommending a smaller pay increase) was higher than the position (4^{th}) of Operating Engineer (for which the Union is suggesting a higher pay increase). This would seem to support the Union's position, but granting either of the proposals before me will not change the relative ranking of either position within the eleven-member comparison group.

An arbitrator is allowed to consider the existence of a tentative agreement as an "other relevant factor" under section 20.22(9). Many of the citations provided by the City to address this issue make the point that if neutrals fail to award the tentative agreement, it will encourage parties to withhold their best positions and penalize the party that has gone the extra mile to reach the tentative agreement. These are valid points and should be taken into consideration by any neutral faced with this situation. I find the City's forceful assertion that neutrals should be strongly inclined to award the position of the party who maintains the tentative agreement at arbitration, however, to be only partially persuasive. It is axiomatic that good faith is essential for a healthy bargaining process. Rejection of a tentative agreement during a ratification process is not an a priori indication of a lack of good faith or in any respect "fundamentally unfair" as characterized by the City. The word "tentative" has meaning and is there for a reason: no agreement exists until ratified by the parties. To accept the premise that neutrals should be almost bound to award the tentative agreement would serve to effectively reduce the ratification process to little more than a perfunctory preceding – something that appears far from what was intended by Chapter 20. If parties believe neutrals will automatically award the tentative agreement, it will reduce the likelihood that bargaining teams will ever take anything less than a "sure agreement" back for a ratification vote for fear that they will have forfeited their opportunity to have any subsequent position seriously considered by a neutral.

Neutrals should certainly give great weight to tentative agreements if there is any indication that one of the parties is engaging in bad faith bargaining. Such is not the case here. At worst, this situation appears to be an indication of poor communication between the bargaining team and the broader unit being represented.

This City's argument regarding the weight to be given to the tentative agreement would have been more persuasive had the Union come back with a substantially more expensive proposal. In this instance the Union has submitted a final offer that actually costs less than the City's offer – another irony of this case. As such, the City's comments and exhibits regarding state budget issues, population changes, and inflation rates are irrelevant. I suspect that the City did not grasp that the Union's proposal was less expensive as they were preparing exhibits for the hearing.

After the Union failed to ratify the tentative agreement, the City was under no obligation to retain the tentative agreement as their final offer for arbitration. Given that the Union's final offer for arbitration neither increases the cost to the City nor proposes any language change from what had been agreed to in the tentative agreement, had the City elected to significantly alter their position from the tentative agreement it would have reduced the reasonableness of their final offer. Notwithstanding my partial reservations regarding the cogency of the City's broader arguments on this issue, the fact that the City did elect to adopt the full tentative agreement as their final position for arbitration does go a long way toward making their position appear reasonable.

A final factor not strongly emphasized by either party during the hearing is the interests and welfare of the public. It is clearly in the interest of the public to have the utility adequately staffed with appropriately qualified, experienced, and trained personnel. The Union presented no data whatsoever to refute (or even dispute) the City's assertions that the larger wage increases given to the three select job classifications were market driven and necessary so as to ensure the adequate operation of the utility. The Union also provided no information to show that the other positions have any need for comparable,

or even now deferential, increases. The collective bargaining process should not be used to inhibit employers from establishing wage rates that reflect the actual market dynamics for specific job skills. It is likely that from time-to-time the pay rates of some job classifications will have to be changed relative to others so as to respond to real world market factors. When an employer responds to market conditions by raising compensation for particularly competitive job classifications, we should not allow the situation or expectation to be created whereby the employer will then be forced to spend the next several years giving lower raises to those same classifications until they find themselves right back in the same non-competitive situation. The Union failed to provide any evidence that would warrant a greater pay increase for some job classifications over others beyond the fact that they think some "catch-up" is in order. There is no evidence before me to indicate that the differential pay increases that have occurred over the past couple years have been the result of anything other than legitimate market conditions that made them necessary to insure the successful operation of this important public utility. There was also no evidence presented to establish the need or justification for additional differential pay increases at this time.

THE AWARD

Wages: Position of the City

Signed this 26th Day of March, 2002.

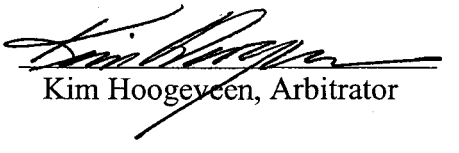
Kim Hoogeveen, Arbitrator
6404 North 70th Plaza
Omaha, NE 68104

CERTIFICATE OF SERVICE

I certify that on the 26th day of March, 2002, I served the forgoing Arbitration Award upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Renee Von Bokern	Ron McClain
2771 104th Street, Suite H	2424 Delaware
Des Moines, IA 50322	Des Moines, IA 50317

I further certify that on the 26th day of March, 2002, I will submit this Award for filing by mailing it to the Iowa Public Employment Relations Board, 513 East Locust, suite 202, Des Moines, Iowa 50309-1912.



Kim Hoogeveen, Arbitrator